IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2222 OF 1986.

Syndicate Bank, a Bank constituted and functioning under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having their Head Office at Manipal, South Kanara District, Karnataka State and the Branch office amongst others at Sir P.M. Road, Fort, Bombay 400 001. ... Plaintiff.

Versus.

1. M/s.Niralin Metalic Industries represented by its partner, Shri Anil V.Gandhi, carrying on business at Anti T.B.Hospital Compound, Ashwinkumar Road, Surat-8, Gujarat State.

2. Mr.Anil V.Gandhi, carrying on business at Anti T.B.Hospital Compound, Ashwinkumar Road, Surat-8, Gujarat State.

3. Mihir A.Gandhi, carrying on business at Anti T.B.Hospital Compound, Ashwinkumar Road, Surat-8, Guajrat State. ... Defendants.

Shri Avdhoot Prabhu i/by M/s.M.Dhruva & Co.for the Plaintiff.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 18th Sept., 2007.

ORAL JUDGMENT.:

1. The Plaintiffs have filed this suit for recovery of a sum of Rs.3,33,305.04 with interest thereon at the rate of 19.5% per annum from 28th July 1986 till

payment.

2. According to the case of the Plaintiffs on the request made by the Defendants, on or about 13th April 19834 a letter of credit was opened in favour of M/s.Shinko Co.Ltd. According to the Plaintiffs in view of the letter of credit having been established on behalf of the Defendnats, the Plaintiffs purchased from the Defendants one Foreign Inward Bill bearing No.276 of 1983 dated 8th July 1983 in the sum of Rs.1,02,084.22 ps. According to the plaintiffs, the Defendants were duly intimated about the credit facility which was granted to them by the letter of confirmation dated 13th April 1983. The Defendants submitted six indent forms dated 8th April 1983 duly confirmed by the intendors setting out description of the goods.

3. The credit facility was given to the Defendants to enable them to import metalized and coated polyster film from Japan. On the basis of the letter of credit, the Plaintiffs received a bill of exchange for the sum of Japanese Yen two million four hundred thousand amounting to Rs.1,02,084.22 dated 8th July 1983 drawn by Shinko Co.Ltd. of Japan on Niralin Metalic Industries of Surat. Along with the said bill of exchange, the Plaintiffs received copies of three invoices dated 29th June 1983 containing all the particulars of the

consignment. Three bills of lading were also received by the Plaintiffs.

4. The aforesaid amount was debited by the foreign correspondents to the account of the Plaintiffs on 8th July 1983 and the documents were received at Bombay on 27th July 1983. According to the Plaintiffs, they are entitled to charge transit interest from 8th July 1983 to 27th July 1983. It is stated that the rupee liability of the Plaintiffs was fixed only on 27th July 1983 in accordance with the Rules framed in that behalf by the Foreign Exchange Dealers Association of India.

5. When the goods arrived at Bombay, the Defendants were intimated about the same on telephone. Out of total consignment of 45 cartons, the Defendants took delivery of a part of the consignment after repeated reminders. However, the Defendants failed and neglected to retire the documents and take delivery of the balance 34 cartons from and out of the said consignment. It is stated that the balance 34 cartons of materilized and coated polyster film are at present lying with M/s.Narendra & Co., Clearing and Forwarding Agents.

6. As the delivery of 34 cartons was not taken, the Plaintiffs have incurred and continue to incur storage charges for the consigned goods. The Plaintiffs have

stated that the Defendants assured that the goods would be cleared before 1st July 1984. However, the Defendants did not comply with their assurance. According to the Plaintiffs, the Defendants by their letter dated 7th June 1985 requested for concession in the rate of interest.

7. The Plaintiffs have stated that they have adjusted a sum of Rs.46,055.30 being the margin amount and they have already given credit for the amount paid by the Defendants while taking delivery of part of the consignment. The claim in the suit is for the amount of Rs.3,33,305.04 being the amount outstanding in respect of the Bill of Exchange dated 8th July 1983 together with interest at the rate of 19.5% per annum.

8. Written statement has been filed by the 1st Defendant raising various contentions. It is contended that the Officer of the Plaintiffs who has affirmed the plaint has no authority to sign and verify the plaint. It is contended that the Application dated 30th April 1983 is not by the 1st Defendant and therefore, the 1st Defendant is not liable. The 1st Defendant denied the signature on the indent forms relied upon by the Plaintiffs. It is contended that even though the Bill of Exchange is not signed on behalf of the 1st Defendant, the 1st Defendant did not dispute the three

invoices dated 29th June 1983. It was contended that the Plaintiffs have not delivered the goods in all 45 cartons covered under the said invoices. It is submitted that as the Bills of Lading are in favour of the Plaintiffs, they should have taken delivery of the goods and they should have delivered the same to the 1st Defendant-firm. It is contended that the suit is barred by law of limitation. The 1st Defendant prayed for dismissal of the suit.

9. As per the pleadings of the parties, the following issues were settled:

i) Whether the Plaintiffs prove that the Defendants are jointly and severally liable to pay a sum of Rs.3,33,305.04 ps. as per the particulars of claim annexed to the plaint?

ii) Whether the Plaintiffs prove that a valid and subsisting hypothecation charge was created in their favour by the Defendants in respect of moveable property being cartons lying at the godown of M/s.Narendra & Co. Clearing and Forwarding Agents?

iii) Whether the Plaintiffs are entitled to the reliefs as prayed for?

iv) What decree and order?

10. The Plaintiffs had taken out a Chamber Summons bearing No.607 of 2006 seeking permission of this Court to lead secondary evidence in respect of the documents on which they are seeking to rely upon. The said Chamber Summons was made absolute by order dated 21st

August 2007.

11. On 13th September 2007, the Plaintiffs filed an affidavit in lieu of examination-in-chief of Shri Dilip Shridhar Kulkarni, its Assistant Manager. The examination-in-chief of the said Shri Dilip Shridhar Kulkarni was recorded in the Court. As none appeared for the Defendants, cross-examination of the said witness was treated as closed. The suit was thereafter adjourned till today for recording evidence of the Defendants. None appears for the Defendants and therefore, their evidence is treated as closed. I have heard the submissions of the learned Counsel appearing for the Plaintiffs.

12. As stated earlier, by order dated 21st August 2007 passed in Chamber Summons No.607 of 2006, a permission has been granted to the Plaintiffs to lead secondary evidence of various documents as incorporated in the said order. The Plaintiffs have placed on record a xerox copy of the application to open a Letter of Credit which is signed by the 2nd Defendant. The Plaintiffs have also placed on record a xerox copy of the letter of credit in the name of the 1st Defendant-firm. Xerox copies of the six indent forms dated 5th April 1983 have been placed on record. The xerox copy of three invoices, and three bills of lading

are also placed on record. The Plaintiffs have produced xerox copy of the bill of exchange on which reliance has been placed in the plaint. The Plaintiffs have placed on record a typed copy of the letter dated 7th June 1985 sent by the Defendants. An extract of statement of account is also placed on record. As stated earlier, the Plaintiffs have been permitted to lead secondary evidence of the aforesaid documents. In paragraph 7 of the plaint, the Plaintiffs have relied upon letter dated 7th June 1985 sent by the Defendants. The 1st Defendant has dealt with the averments made in paragraph 7 of the plaint in paragraph 20 of the written statement. The execution or the genuineness of the letter dated 7th June 1985 is not disputed in the written statement and on the contrary, it is contended that the contents of the said letter are being misconstrued or misused by the Plaintiffs. The Plaintiffs have been permitted to lead secondary evidence of the said letter in the form of a typed copy which is annexed to the plaint. There is no dispute between the parties as regards the fact that letter dated 7th June 1985 was addressed by the Defendants to the Plaintiffs. In the said letter, the Defendants have accepted that the goods are lying in the bonded warehouse for a considerable time. A request is made by the Defendants for waiver of interest to enable them to clear the consignment gradually. It is prayed that the Plaintiffs should rescue the Defendants from

the disaster by waiving the interest on the principal amount. There is no dispute between the parties that the said letter relates to the transaction subject matter of the suit.

13. The evidence of the Plaintiffs' witness has gone unchallenged. The Plaintiffs have been permitted to lead secondary evidence of the documents which are produced along with a list. The said documents have also been proved by the Plaintiffs' witness. In letter dated 7th June 1985, the Defendants have accepted their liability and have prayed for waiver of interest. The suit is filed on 28th July 1986. In view of the clear admission in the aforesaid letter, there is no merit in the plea of bar of limitation.

14. The Plaintiffs have established their claim for recovery of the amount from the Defendants. Now the only question is what should be the interest from the date of filing of the suit. According to the Plaintiffs, the contractual rate of interest is 19.5%. Considering the facts and circumstances of the case, further interest deserves to be granted at the rate of 15% per annum. The aforesaid issues are thus answered accordingly.

15. Hence the following order is passed:

i) The suit is decreed as prayed with modification that the further interest payable on Rs.3,33,305.04 ps. will be at the rate of 15% per annum from the date of institution of the suit till realisation or payment.

ii) Certified copy is expedited.

Judge.